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ILLINOIS COMMERCE COMMISSION

STATE OF ILLINOIS



APPELLATE COURT

OTTAWA

THIRD DISTRICT

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ILLINOIS
COMMERCE COMMISSION

2003 AUG 28 A 11:

OFFICE OF
COUNSEL

A NOTICE OF ISSUANCE OF MANDATE

DATE: 08/22/03

TO: Illinois Commerce Commission
160 N. LaSalle Street
Suite C-800
Chicago, IL 60601

CASE NO. 3-02-0944

ICC No. 02-0160

TITLE: ILLINOIS BELL TELEPHONE COMPANY d/b/a
AMERITECH ILLINOIS,
Petitioner-Appellant,
v.
ILLINOIS COMMERCE COMMISSION, and
Z-TEL COMMUNICATIONS, INC.,
Respondent-Appellee.

Dear Clerk:

Pursuant to Supreme Court Rule 368 I am returning to you for filing the Mandate in the above entitled cause.
Please sign the enclosed copy and return to this office.

Mark Fleischman

Clerk of the Appellate Court

Received Mandate: 8/28/03 By: Jr P 7

CHIEF CLERK'S OFFICE

2003 AUG 29 A 9:53

ILLINOIS
COMMERCE COMMISSION

STATE OF ILLINOIS



APPELLATE COURT

THIRD DISTRICT

OTTAWA

ILLINOIS COMMISSION
2003 AUG 28 A 11:32
OFFICE OF JESSEL

At a term of the Appellate Court, begun and
held at Ottawa, on the 1st Day of January in the year
of our Lord Two Thousand three, within and for the Third
District of Illinois -

Present -

HONORABLE MARY W. McDADE, Presiding Justice

HONORABLE WILLIAM E. HOLDRIDGE, Justice

HONORABLE KENT SLATER, Justice

HONORABLE DANIEL L. SCHMIDT, Justice

HONORABLE TOBIAS G. BARRY, Justice

HONORABLE TOM M. LYTTON, Justice

GIST FLESHMAN, Clerk

STATE OF ILLINOIS



APPELLATE COURT

THIRD DISTRICT

OTTAWA

3-02-0944

ILLINOIS BELL TELEPHONE COMPANY d/b/a ICC No. 02-0160
AMERITECH ILLINOIS,

Petitioner-Appellant,

v.

ILLINOIS COMMERCE COMMISSION, and
Z-TEL COMMUNICATIONS, INC.,

Respondent-Appellee.

BE IT REMEMBERED, that, to-wit: On the 11th day of July, 2003 an Order of the aforementioned Court was entered of record and in accordance with the views expressed in the attached Order the judgment of the Illinois Commerce Commission is Reversed.

In accordance with Supreme Court Rule 368, this mandate is issued.

Costs to be taxed in accordance with the law.

STATE OF ILLINOIS



3-02-0944

Illinois Bell v. ICC

APPELLATE COURT

THIRD DISTRICT

OTTAWA

At a term of the Appellate Court, begun and held at
Ottawa, on the 1st Day of January in the year of our Lord
Two thousand three, within and for the Third District of
Illinois:

Present -

HONORABLE MARY W. McDADE, Presiding Justice X

HONORABLE WILLIAM E. HOLDRIDGE, Justice X

HONORABLE KENT SLATER, Justice X

HONORABLE DANIEL L. SCHMIDT, Justice

HONORABLE TOBIAS G. BARRY, Justice

HONORABLE TOM M. LYTTON, Justice

GIST FLESHMAN, Clerk

BE IT REMEMBERED, that afterwards on

July 11, 2003 the Order of the Court was filed
in the Clerk's Office of said Court, in the words and figures
following viz:

The text of this opinion may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

3--02--0944

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT
A.D., 2003

ILLINOIS BELL TELEPHONE)	Petition for Review of the
COMPANY, D/B/A AMERITECH)	Orders of the Illinois
ILLINOIS,)	Commerce Commission entered
)	in Docket No. 02--0160 on
Petitioner-Appellant,)	May 8, 2002, and
)	December 4, 2002.
v.)	
)	
ILLINOIS COMMERCE)	
COMMISSION, and Z-TEL)	
COMMUNICATIONS, INC.)	
)	
Respondent-Appellee.)	

ORDER "Not To Be Published"

The petitioner, Illinois Bell Telephone Company, d/b/a Ameritech Illinois (Ameritech), appeals from orders of the Illinois Commerce Commission ("Commission"). The Commission held that it had the authority to impose penalties against Ameritech under section 305 of the Public Utilities Act ("Act") for its violation of section 801 of the Act. 220 ILCS 5/13--305, 801 (West 2000). It therefore determined that a penalty proceeding should be initiated to determine whether penalties should be imposed pursuant to section 305. 220 ILCS 5/13--305 (West 2002). For the following reasons, we reverse the Commission's orders.

I. FACTS

A. Background

The respondent, Z-Tel Communications, Inc. ("Z-Tel"), provides local telephone service in Illinois by reselling Ameritech's network. Z-Tel purchases local telephone service that it provides to an end user from Ameritech at discounted prices. Ameritech installs and maintains the service for Z-Tel's customers.

If a Z-Tel customer switches telephone service from Z-Tel to another carrier that also uses Ameritech's network to provide local service, the new telephone carrier will place an order with Ameritech to discontinue Z-Tel's service and to establish the new carrier's service. Also, if Ameritech's retail operations persuade a Z-Tel customer to switch to Ameritech, then Ameritech's retail unit will notify Ameritech's wholesale unit to discontinue Z-Tel's service to the customer. In both situations, Ameritech notifies Z-Tel that the customer has discontinued Z-Tel's service by providing Z-Tel with what is known as an "836 line loss notification" ("836 LLN"). According to Z-Tel, it relies upon the 836 LLN from Ameritech as the basis to discontinue billing to its customer. If the 836 LLN is untimely or inaccurate, Z-Tel may then improperly bill its customer for service after the customer had discontinued Z-Tel's service.

B. Applicable Sections of the Act

The following statutes are pertinent to this appeal and provide, in part:

1. 220 ILCS 5/13--304. Action to recover civil penalties.

"(a) The Commission shall assess and collect all civil penalties established under this Act against telecommunications carriers ***." 220 ILCS 5/13--304(a) (West 2002).

2. 220 ILCS 5/13--305. Amount of civil penalty.

"A telecommunications carrier *** that violates or fails to comply with any provisions of this Act or that fails to obey, observe or comply with any order, decision, rule, regulation, direction or requirement *** of the Commission, *** in a case in which a civil penalty is not otherwise provided for in this Act, *** shall be subject to a civil penalty imposed in the manner provided for in Section 13--304 ***." 220 ILCS 5/13--305 (West 2002).

3. 220 ILCS 5/13--514. Prohibited Actions of Telecommunications Carriers.

"A telecommunications carrier shall not knowingly impede the development of competition in any telecommunications service market. The following prohibited actions are

considered per se impediments to the
development of competition *** :

(2) unreasonably impairing the
speed, quality, or efficiency of
services used by another
telecommunications carrier;

* * *

(6) unreasonably acting or failing
to act in a manner that has a
substantial adverse effect on the
ability of another telecommuni-
cations carrier to provide service
to its customers;

* * *

(9) unreasonably refusing or
delaying access to or provision of
operation support systems to
another telecommunications carrier
or providing inferior operation
support systems to another
telecommunications carrier;

* * *

(11) violating the obligations of
Section 13--801[.] 220 ILCS 5/13--
514 (2), (6), (9), (11) (West 2002).

4. 220 ILCS 5/13--515. Enforcement.

"(a) The following expedited procedures shall be used to enforce the provisions of Section 13--514 of this Act." 220 ILCS 5/13--515 (West 2002).

5. 220 ILCS 5/13--516. Enforcement remedies for prohibited actions by telecommunications carriers.

"(a) In addition to any other provision of this Act, all of the following remedies may be applied for violations of Section 13--514:

(2) Notwithstanding any other provision of this Act, for a second and any subsequent violation of Section 13--514 committed by a telecommunications carrier after the effective date of this amendatory Act of the 92nd General Assembly [P.A. 92--22], the Commission may impose penalties ***. ***

(3) The Commission shall award damages, attorney's fees, and costs to any telecommunications carrier that was subjected to a violation of Section 13--514." 220 ILCS 5/13--516(a)(2), (3) (West 2002).

6. 220 ILCS 5/13--801. Incumbent local exchange carrier obligations.

"(d) Network elements. The incumbent local exchange carrier shall provide *** nondiscriminatory access to network elements * * *.

* * *

(k) The Commission shall determine any matters in dispute between the incumbent local exchange carrier and the requesting carrier pursuant to Section 13--515 of this Act." 220 ILCS 5/13--801(d), (k) (West 2002).

C. Procedural History

On February 22, 2002, Z-Tel filed a verified complaint with the Commission pursuant to sections 514, 515, and 516 of the Act. 220 ILCS 5/13--514, 515, 516 (West 2002). Z-Tel alleged that Ameritech violated sections 514, 801, and other provisions of the Act by providing Z-Tel with untimely, inaccurate and unreliable 836 LLNs, while simultaneously providing its own retail operations with more reliable line loss notifications. See 220 ILCS 5/13--514, 801 (West 2002). Z-Tel also alleged that Ameritech's conduct violated the Interconnection Agreement between the parties. As emergency relief, Z-Tel requested that the Commission enjoin Ameritech from initiating "winback" marketing efforts to Z-Tel's customers unless and until Ameritech provided Z-Tel with the same line loss notification that

Ameritech provided to its retail operations. Z-Tel also requested that Ameritech be required to notify former Z-Tel customers that any over-billing of the customer by Z-Tel may have been due to Ameritech's failure to provide Z-Tel with an accurate and timely 836 LLN as well as to indemnify Z-Tel for any over-billing complaints. Z-Tel requested money damages, attorney fees and costs. Finally, Z-Tel requested that the Commission impose monetary penalties upon Ameritech for its violations of the Act.

Following an evidentiary hearing, the Commission entered a final order on May 8, 2002. In that order, the Commission ruled that Ameritech violated section 514(2) of the Act based on its late and inaccurate 836 LLNs which unreasonably impaired the speed, quality and efficiency of services used by Z-Tel. See 220 ILCS 5/13--514(2) (West 2002). The Commission further ruled that Ameritech's untimely, inaccurate and unreliable 836 LLNs had an adverse effect on Z-Tel's ability to provide service to its customers in violation of section 514(6) of the Act. See 220 ILCS 5/13--514(6) (West 2002). Finally, the Commission held that Ameritech unreasonably provided Z-Tel with inferior and discriminatory access to operations support systems in violation of sections 514(9), (11) and 801. 220 ILCS 5/13--514(9), (11), 801 (West 2002). The Commission rejected Z-tel's claim that Ameritech's conduct violated the terms of the parties' Interconnection Agreement.

The Commission awarded Z-Tel \$160,000 in damages for the extra costs Z-Tel incurred as a result of the untimely 836 LLNs

and ordered Ameritech to pay Z-Tel's attorney fees and costs. The Commission rejected Z-Tel's remaining damage claims and its request for indemnification for over billing complaints by customers.

As for penalties, the Commission noted that section 516(a)(2) of the Act only authorized it to impose penalties for a second and any subsequent violation of section 514 committed after June 30, 2001. See 220 ILCS 5/13--516(a)(2) (West 2002). The Commission noted that section 305 of the Act also authorized the imposition of penalties for violations of the Act. However, the Commission noted that section 305 only provided for penalties if penalties were not provided for in another part of the Act. See 220 ILCS 5/13--305 (West 2002). Therefore, the Commission held, because section 516 provides for penalties, section 304 and 305 do not apply for Ameritech's violations of section 514. See 220 ILCS 5/13--304, 305, 514 (West 2002).

Nevertheless, the Commission concluded that penalties could be imposed under sections 304 and 305 of the Act for Ameritech's violation of section 801. 220 ILCS 5/13--304, 305, 801 (West 2002). The Commission then ruled that a proceeding should be initiated to determine whether penalties should be imposed.

On November 7, 2002, the Commission entered an Order on Rehearing reaffirming its final order. The Commission held that the remedies in section 516(a) supplement rather than substitute for the remedies in section 305. The Commission also ruled that section 516(a)(2) did not authorize penalties for violations of

section 801. 220 ILCS 5/13--516(a)(2), 801 (West 2002). Therefore, it held, penalties under section 305 were applicable. 220 ILCS 5/13--305 (West 2002). Finally, the Commission held that Ameritech independently violated both section 801 and section 514. 220 ILCS 5/801, 514 (West 2002). Ameritech filed an application for rehearing on the order on rehearing only as to the question of whether section 305 authorizes penalties for Ameritech's violation of section 801. 220 ILCS 5/13--305, 801 (West 2002). The application for rehearing was denied.

II. ANALYSIS

On appeal, Ameritech argues that the Commission did not have the authority to impose penalties pursuant to section 305 of the Act for Ameritech's violation of section 801 of the Act. 220 ILCS 5/13--305, 801 (West 2002).

Interpretation of a statute is a question of law and will be reviewed on a de novo basis. People ex rel. Birkett v. City of Chicago, 202 Ill. 2d 36, 779 N.E.2d 875 (2002). In cases involving an agency's interpretation of a statute which the agency is charged with administering, the agency's interpretation is considered relevant but not binding on the court. Branson v. Department of Revenue, 168 Ill. 2d 247, 659 N.E.2d 961 (1995). If the language of the statute is clear and unambiguous, the court must interpret the statute according to its terms without resorting to aids of construction. Heck v. Central Illinois Light Company, 152 Ill. 2d 401, 604 N.E.2d 939 (1992).

Statutory language must be given its plain and ordinary meaning; when the terms used by the legislature are clear and unambiguous, no resort is required to other aids of construction. Michigan Avenue National Bank v. County of Cook, 191 Ill. 2d 493, 732 N.E.2d 528 (2000).

Here, the Commission found that Ameritech violated five sections of the Act -- four subsections of section 514 and a separate section 801 violation. 220 ILCS 5/13--514(2), (6), (9), (11); 801 (West 2002). It made three findings with respect to these penalties. First, it held that Ameritech could not be penalized under section 516 for violating section 514 because section 516 does not permit penalties for a first offense. 220 ILCS 5/13--514, 516 (West 2002). Second, the Commission held that Ameritech could not be penalized under section 305 for violating section 514 because section 516 provides penalties for section 514 violations, and section 305 does not apply if penalties are provided for in another section of the Act. 220 ILCS 5/13--305, 514, 516 (West 2002). Third, the Commission held that Ameritech could be penalized under section 305 for its violation of section 801 because section 801 was independent of its corresponding violation of section 514(11). 220 ILCS 5/13--305, 514(11), 801 (West 2002).

We fail to see the logic of the Commission's third finding. Section 514(11) makes it a per se violation of the Act to violate section 801 of the Act. 220 ILCS 5/13--514(11), 801 (West 2002). Z-Tel has not alleged and the Commission did not determine that

the violations of sections 801 and 514(11) were based upon different facts. 220 ILCS 5/13--514(11), 801 (West 2002). Instead, the Commission found that Ameritech violated section 514(11) by violating section 801. 220 ILCS 5/13--514(11), 801 (West 2002). Therefore, the violations of section 514(11) and section 801 are the same violation based upon the same conduct. 220 ILCS 5/13--514(11), 801 (West 2002). Accordingly, if a penalty cannot be assessed against Ameritech for a section 514(11) violation under section 516 because this was Ameritech's first violation since June 30, 2001, then it only makes sense that a penalty cannot be assessed under section 305 for a section 801 violation. 220 ILCS 5/13--514(11), 516, 801 (West 2002). This is because section 305 specifically states that a penalty can only be assessed under that section when a penalty is not otherwise provided for in the Act. 220 ILCS 5/13--305 (West 2002). Here, the penalty for a violation of section 801 is "otherwise provided for in the Act" by its mention in section 514(11), which allows for penalties under section 516. 220 ILCS 5/13--514(11), 516, 801 (West 2002). To find otherwise would be to contort the plain meaning of the Act. 220 ILCS 5/1--101 et seq. (West 2002).

The legislature made it clear that a violation of section 801 was a violation of section 514. 220 ILCS 5/13--514(11) (West 2002). It also noted that penalties should not apply for a first violation of any section 514 violation, including "violating the obligations of section 13--801." 220 ILCS 5/13--514(11) (West

2002). If the legislature had not intended the "first violation" penalty exemption to apply to violations of section 801 it could have easily stated so. Since it did not, we hold that the Commission erred when it imposed penalties against Ameritech under section 305 of Act for its violation of section 801 of the Act. 220 ILCS 5/13--305, 801 (West 2000). Therefore, the Commission's finding that penalties may be imposed under section 305 for Ameritech's violation of section 801 is reversed. 220 ILCS 5/13--305, 801 (West 2002). We also reverse the Commission's direction that a penalty proceeding should be initiated to determine whether penalties should be imposed pursuant to section 305. 220 ILCS 5/13--305 (West 2002).

The orders of the Commission are reversed.

Reversed.

SLATER, J., with McDADE, P.J., and HOLDRIDGE, J.,
concurring.

STATE OF ILLINOIS



APPELLATE COURT THIRD DISTRICT
OTTAWA

STATE OF ILLINOIS,)
APPELLATE COURT,) ss.
THIRD DISTRICT)

As Clerk of the Appellate Court, in and for said Third District of the State of Illinois, and the keeper of the Records and Seal thereof, I do hereby certify that the foregoing is a true, full and complete FINAL ORDER of the said Appellate Court in the above entitled cause, now of record in my said office.

In Testimony Whereof, I hereunto set my hand and affix the seal of said Appellate Court, at Ottawa, this 22nd day of August in the year of our Lord two thousand and three

W. H. Freshman

Clerk of the Appellate Court